

REMARKS

Claims 1-14 are pending in the application. Claim 14 is being added by the present amendment. The Office Action of April 5, 2005 rejected claims 1-6 and 9 under the judicially created doctrine of obviousness-type double patenting. Claims 1-13 were rejected under 35 U.S.C. §103 as being unpatentable for obviousness over various references. Applicant requests reconsideration and withdrawal of the rejections.

**Rejection of Claims 1-6 and 9 Based On
Obviousness-Type Double Patenting**

The Office Action of April 5, 2005, rejected claims 1-6 and 9 based on obviousness-type double patenting over claims 1-3 and 9 of U.S. Patent No. 5,651,213 in view of Buller GB 2200828 A1. Applicant submits that the rejection should be withdrawn because claims 1-6 and 9 of the present application would not have been obvious over claims 1-3 and 9 of the '213 patent and Buller, since there is no motivation or suggestion to modify the subject matter of those claims or to combine with the teachings of Buller.

The Office Action asserts that it would have been obvious to one of ordinary skill in the art to modify "any transportable turf" by using a porous foundation with grass root intertwined as disclosed by Buller, so that the plants' "[r]oots remain undamaged and therefore transplant on a new site very rapidly." (Office Action, page 7, quoting Buller, at page 1, 2nd paragraph). The Office Action stated "the Examiner does not know a

reason why any type of root zone media would not want a porous foundation when the goal is to transplant sod with undamaged roots.” *Id.*

Applicant submits that it is incorrect that Buller provides a motivation to use a porous foundation with any and every type of transportable turf. Transportable turfs have been and continue to be provided without a porous foundation. This indicates there may be motivation not to use a porous foundation with some types of transportable turfs or root zone media. Applicant respectfully maintains that Buller does not provide a motivation to modify the specific subject matter of claims 1-3 and 9 of the '213 patent to include a porous foundation.

Rejection of Claims 1-13 as Obvious Over Kuestner U.S. Patent No. 2,605,589 in View of Other References

Claims 1-6 and 10 were rejected under 35 U.S.C. §103(a) as obvious over Kuestner U.S. Patent No. 2,605,589 in view of Beard (Turfgrass: Science and Culture). Claims 7, 8 and 11-13 were rejected under 35 U.S.C. §103(a) as unpatentable over Kuestner in view of Beard and further in view of Zamboni U.S. Patent No. 4,084,763. Claim 9 was rejected based on Kuestner in view of Beard and further in view of Miyachi U.S. Patent No. 4,982,526.

Claim 1 recites a root zone medium that is a soil-less sand based root zone medium comprising a mixture of organic amendment and sand in an amount of at least about 60% by weight, and wherein the sand has grains with a size range of from about

0.05 mm to about 1 mm. The Office Action acknowledges that Kuestner does not disclose a root zone medium with the sand at 60% by weight with a grain size of from 0.05 to 1 mm and the medium is a mixture. However, the Office Action states that Beard discloses a mixture as the root zone medium. The Office Action also states that Beard discloses using a soil component with at least 60% sand by weight with a grain size of from 0.05 to 1 mm. (Office Action, page 4). The Office Action asserts that it would have been obvious to one of ordinary skill in the art to modify the turf of Kuestner by using the sand composition of Beard. *Id.*

Applicant submits that there is no motivation to modify Kuestner by replacing the separate layers of sand and peat with a mixture of root zone medium. As acknowledged by the Office Action, Kuestner does not disclose or suggest a root zone medium that is a mixture. Moreover, there is no motivation or suggestion to replace the specific layers taught by Kuestner with the specific root zone medium in Beard. Kuestner shows multiple layers 10 and 14 of peat moss, humus or the like, and a separate layer 15 of sand. (See Fig. 1, col. 2, lines 20-27). Also, the sand layer 15 is not spread over the porous foundation. Layer 14 is disposed between the sand layer 15 and the mesh 12. Applicant submits that there is no motivation or suggestion to replace the separate sand layer and peat moss layer in Kuestner with a root zone medium that is a mixture.

Accordingly, claims 1-13 of the present application would not have been obvious to one of ordinary skill in the art based on Kuestner and any combination of Beard,

Zamboni and/or Miyachi. Applicant requests that the rejection of claims 1-13 be withdrawn.

Conclusion

The Commissioner is hereby authorized to charge any deficiency or credit any excess portion of this fee to Deposit Account No. 13-0017.

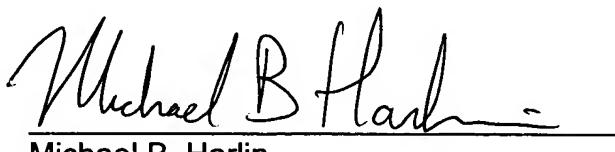
In view of the foregoing remarks, Applicant respectfully requests allowance of claims 1-14. The Examiner is invited to telephone Applicant's undersigned representative at 312-775-8202 if the Examiner believes, for any reason, that personal communication would expedite prosecution of this application.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: October 5, 2005

By:



Michael B. Harlin

Michael B. Harlin
Reg. No. 43,658
Attorneys for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100